

## **REMARKS/ARGUMENTS**

The rejections presented in the Office Action dated December 9, 2009 (hereinafter Office Action) have been considered. Claims 1-12, 14, 35-46 remain pending in the application. Reconsideration of the pending claims and allowance of the application in view of the present response is respectfully requested.

Claims 6 and 40-41 are objected to as being dependent from a rejected base claim, but would be allowable if rewritten to include all of the features of the base claim and any intervening claims. The Applicant thanks the Examiner for the indication of allowability of claims 6 and 40-41.

Claims 1-5, 7-12, 14, 35-39 and 42-46 are rejected based on 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,520,176 to Cohen (hereinafter “Cohen”) in combination with U.S. Patent No. 6,398,728 to Bardy and “Aircraft Noise and Sleep Disturbance: Final Report”, prepared by the Civil Aviation Authority London on behalf of the Department of Trade (hereinafter “CAA report”).

Independent claims 1 and 35 each express in some form, among other features, evaluating a patient’s sleep quality using both physiological and non-physiological information by calculating a composite sleep quality metric as a function of the physiological information and the non-physiological information stored in an implantable device. Applicant respectfully asserts that the combination of Cohen, Bardy, and the CAA report at least fails to teach or suggest evaluating a patient’s sleep quality by calculating a composite sleep quality metric as a function of the physiological information and the non-physiological information stored in an implantable device.

The Office Action refers to col. 2, lines 33-59 of Cohen as disclosing a system and methods for sleep quality data collection and analysis. Cohen discusses evaluating a sleep quality based on data acquired from various physiological sources. Cohen does not describe calculating a composite sleep quality metric as a function of the physiological information and the non-physiological information. Cohen cannot calculate a metric based on physiological information and the non-physiological information because as the Office Action correctly states “Cohen fails to teach of utilizing non-physiological parameters in the

research process”. Applicant further asserts that Cohen does not describe any sleep quality metric, and clearly does not describe calculating a composite sleep quality metric as a function of physiological and non-physiological information..

The Office Action relies on the CAA report to teach utilizing non-physiological parameters in the research process. The Applicant respectfully asserts that the CAA report fails to overcome the deficiencies of Cohen with regard to evaluating a patient’s sleep quality by calculating a composite sleep quality metric as a function of the physiological information and the non-physiological information.

The Office Action further relies on Bardy to teach that the collection, storage, and evaluation of sleep quality data occurs on an implantable device. The Applicant respectfully asserts that Bardy does not discuss sleep quality at all and therefore cannot overcome the deficiencies of Cohen and the CAA report with regard to evaluating a patient’s sleep quality by calculating a composite sleep quality metric as a function of the physiological information and the non-physiological information.

The Applicant respectfully asserts that at least for the reasons stated above, Applicant’s claims 1 and 35 and all claims dependent thereon are not obvious in view of the combination of Cohen, Bardy, and the CAA report.

Each of the rejections of dependent claims 2-5, 7-12, 14, 36-39, and 42-46 relies on the combination of Cohen, Bardy, and the CAA report to teach or suggest all of the elements of independent claims 1 and 35 from which these claims depend. Applicant reasserts the arguments above regarding the failure of Cohen, Bardy, and the CAA report to teach or suggest all of the elements of claims 1 and 35. While Applicant does not acquiesce with the particular rejections to these dependent claims, it is believed that these rejections are now moot in view of the remarks made in connection with independent claims 1 and 35. These dependent claims include all of the limitations of the base claims and any intervening claims, and recite additional features which further distinguish these claims from the cited references.

To the extent the Applicant has not responded to any characterization by the Examiner of the asserted art or of the Applicant’s claimed subject matter, or to any

application by the Examiner of the asserted art to any claimed subject matter, the Applicant wishes to make clear for the record that any such lack of response should not be interpreted as an acquiescence to such characterizations or applications. A detailed discussion of each of the Examiner's characterizations, or any other assertions or statements beyond that provided above is unnecessary in view of the present response. The Applicant reserves the right to address in detail any such assertions or statements in future prosecution.

Authorization is given to charge Deposit Account No. 50-3581 (GUID.058PA) any necessary fees for this filing. If the Examiner believes it necessary or helpful, the Examiner is invited to contact the undersigned attorney to discuss any issues related to this case.

Respectfully submitted,

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